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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/735,332	12/12/2000	John M.K. Daniel	1001.1351106	5433

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CROMPTON, SEAGER & TUFTE, LLC  
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MINNEAPOLIS, MN 55403-2420

EXAMINER

NGUYEN, VI X

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 01/27/2004

19

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/735,332

Applicant(s)

DANIEL ET AL.

Examiner

Victor X Nguyen

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 31-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 31-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Continued Prosecution Application*

1. The request filed on 12/16/2003 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/735332 is acceptable and a CPA has been established. An action on the CPA follows.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 31-36 are rejected under 35 U.S.C. 102 (b) as being anticipated by Reger et al. (U.S. 5,108,419).

With respect to claim 31, Reger et al disclose in figures 2, 4, an emboli capturing system includes an elongate member (56) having a proximal end and a distal end. A flexible emboli capturing device (54) has a distal end and a proximally opening mouth. The distal end mounts proximate the distal end of the elongate member (56). The distal end of the elongate member extends distally of the emboli capturing device. The flexible capturing device (54) extends proximally over a portion of the elongate member to form a proximally opening mouth (see col. 8, lines 1-19). A frame (58) disposed on the mouth of the flexible emboli capturing device.

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With respect to claims 32-33, Reger et al disclose the emboli capturing system; wherein the frame (58) disposes about the elongate member, in addition, the frame is attached to the elongated member proximal of where the flexible member is attached.

With respect to claims 34-36, Reger et al disclose the emboli capturing system, wherein the frame (58) includes a flexible material and a shape memory characteristic (col. 6, lines 33-39). Moreover, the frame includes a continuous loop (item 77).

Claims 31-36 are rejected under 35 U.S.C. 102 (e) as being anticipated by Barbut et al. (U.S. 5,769,816).

With respect to claim 31, Barbut et al disclose in figures 1, 7, an emboli capturing system includes an elongate member (50) having a proximal end and a distal end. A flexible emboli capturing device (40) has a distal end and a proximally opening mouth. The distal end mounts proximate the distal end of the elongate member (50). The distal end of the elongate member extends distally of the emboli capturing device. The flexible capturing device (40) extends proximally over a portion of the elongate member to form a proximally opening mouth. A frame (30) disposed on the mouth of the flexible emboli capturing device.

With respect to claims 32-33, Barbut et al disclose the emboli capturing system; wherein the frame (30) disposes about the elongate member, in addition, the frame is attached to the elongated member proximal of where the flexible member is attached.

With respect to claims 34-36, Barbut et al disclose the emboli capturing system, wherein the frame (30) includes a flexible material and a shape memory characteristic (col. 8, lines 9-15). Moreover, the frame includes a continuous loop (figs 1 and 4).

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*Conclusion*

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 5,941,896 to Kerr      U.S. Pat. No. 5,509,227 to Marrero

U.S. Pat. No. 5,848,964 to Samuels      U.S. Pat. No. 6,007,557 to Ambrisco


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X Nguyen whose telephone number is (703) 305-4898. The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Milano can be reached on (703) 308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703) 746-3982.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Victor X Nguyen  
Examiner  
Art Unit 3731

Vn *✓*  
January 08, 2004

  
MICHAEL J. MILANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700